IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 128 OF 2007

Yatendrasingh Chauhan ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr. S.R. Chitnis, Senior Advocate with Mr. S.V. Kotwal for applicant.
Mr. Y.S. Shinde, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : January 25, 2007.

P.C.:

1. Heard Mr. Chitnis the learned Senior Counsel with Mr. Kotwal for the applicant who has been refused to be released on bail by the learned Additional Sessions Judge at Mumbai in Bail Application No.2166 of 2006.

2. The applicant who holds a fire arm licence was employed as a security guard by a private security agency by name "Top Security Services" and in that capacity he was posted for duty at a bungalow named "Mannat Mansion" located at Bandra. Along with him another security guard by name Chandrapratap Singh was also on duty. But the applicant was posted as a

gunman, whereas Chandrapratap Singh and another person were posted as guards. On 14/8/2006 while he was on duty, it appears Chandrapratap Singh ridiculed the applicant by asking him why he was sitting in the chair inspite of taking Rs.15000/- per month as salary and whether his gun was really able to fire. There was some sort of argument between the two and allegedly the applicant took out his revolver and fired pointedly on the chest of the Chadrapratap Singh. Consequently, Chandrapratap Singh died and FIR came to be filed on 15/8/2006. The applicant was taken in custody on 15/8/2006 and on submission of the charge-sheet on 1/11/2006, his bail application came to be rejected on 2/12/2006 by the learned Additional Sessions Judge, Greater Mumbai.

3. The learned Additional Sessions Judge was, prima facie, satisfied that the applicant is the assailant and he fired on the deceased with his licenced fire arm, he was not a resident of Mumbai and he had migrated from U.P. and, therefore, if he was released on bail, it would be difficult to secure his attendance at the time of trial. For these two

reasons the learned Judge recorded that until the investigation is completed it would not be appropriate to release the accused on bail. There is apparent error in these observations because at the opening of the order dated 2/12/2006 itself, the learned Judge has observed that the charge-sheet has been filed on 1/11/2006 and, therefore, investigation was also completed. The applicant's maternal uncle Sunil Singh Raghav, who is working as Electrical Fitter with Western Railways at Kandivali Workshop and residing at 94/2, Railway Quarters, Sun Mil Lane, Lower Parel (W), Mumbai 400 013 has filed an affidavit and has stated that he has a permanent job with the Western Railways and he is born and brought up in Mumbai and he will undertake to ensure that on commencement of the trial, the applicant accused will remain present before the concerned court as directed from time to time. He has thus taken the responsibility of securing the presence of the accused-applicant during the trial.

4. Having regards to the obtaining circumstances and the nature of the offence alleged with the prima facie evidence of the deceased being killed by firing

a bullet by the applicant himself, it cannot be said that he must be continued in jail during the trial of the case and more so the reasoning set out by the learned Additional Sessions Judge does not appear to be realistic and the fact that Sunil Singh Raghav, a permanent employee of the Western Railways has undertaken to secure the presence of the accused-applicant before the trial court when the trial commences.

5. Hence this application succeeds and the same is allowed. It is directed that the applicant be released on bail on furnishing a PR bond in the sum of Rs.10,000/- and with two solvent sureties for the like amount. Mr. Sunil Singh Raghav will be one of these two sureties. The applicant shall remain present before the trial court as and when required and he shall not act in any manner which will amount to tampering with the evidence of the prosecution. It is further directed that the applicant shall not leave Mumbai City without obtaining prior permission in writing from the concerned police station till the trial commences and is completed. The trial of the

case is expedited.

(B.H. Marlapalle,J.)